



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 17, 1997

Mr. Kevin W. Kapitan
Assistant City Attorney
Police Legal Advisor
Fort Worth Police Department
Office of the Police Legal Advisor
350 West Belknap
Fort Worth, Texas 76102

OR97-2770

Dear Mr. Kapitan:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110787.

The Fort Worth Police Department (the "department") received a request for information regarding persons "who have permits to drive a cab in the City of Fort Worth." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You raise section 552.130 of the Government Code in conjunction with new provisions of the Transportation Code. We first address the applicability of section 552.130 to the requested information. The Seventy-fifth Legislature added section 552.130 to the Open Records Act which governs the release and use of information obtained from motor vehicle records.¹ Section 552.130 provides as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

¹Act of May 29, 1997, H.B. 1069, 75th Leg., R.S.

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130. The Seventy-fifth Legislature added chapter 730 to the Transportation Code.² The stated purpose of chapter 730 of the Transportation Code is "to implement 18 U.S.C. Chapter 123 and to protect the interest of an individual in the individual's personal privacy by prohibiting the disclosure and use of personal information contained in motor vehicle records, except as authorized by the individual or by law." Transp. Code § 730.002. You argue that the definitions of "individual record," "motor vehicle record," and "personal information," as set forth under section 730.003 of the Transportation Code, apply to the types of information requested, and therefore section 552.130 precludes the release of the majority of the information sought. We disagree.

In this instance, we believe that for purposes of the department's management of its cab driver program, the department is an "agency," as defined by section 730.003(1) of the Transportation Code, that compiles or maintains motor vehicle records. *See* Transp. Code § 730.003(4) (defining "motor vehicle record"). However, in its definition of "motor vehicle record," section 730.003(4) of the Transportation Code expressly excludes records that pertain to a motor carrier. The term "motor carrier" means an individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a road or highway in this state. Transp. Code § 643.001. *See also* 49 U.S.C. 131, § 13102(12) ("motor carrier" means a person providing motor vehicle transportation for compensation). We believe that persons who drive taxicabs are "motor carriers," and thus are outside the ambit of section 552.130 of the Government Code. *See* Gov't Code 552.130(b). We therefore conclude that you may not withhold the requested information under section 552.130 of the Government Code.

You also raise section 552.101 in conjunction with chapter 411 of the Government Code.³ If the information submitted for our review contains criminal history record information ("CHRI") that is generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC") it must not be publicly released. The city must also withhold all criminal history information obtained from the TCIC and NCIC.

²Act of May 29, 1997, H.B. 1069, 75th Leg., R.S.

³Section 552.101 excepts from required public disclosure information that is considered confidential by law, including statutory law.

The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose, Gov't Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. The remaining information must, however, be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/gle

Ref.: ID# 110787

Enclosures: Submitted documents

cc: Mr. Jack Douglas, Jr.
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(w/o enclosures)